



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: James H. Bilbray

(Name of defendant)

(as Member

of Defense Base Closure and Realignment Commission)

(Title)

(Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387 JCH

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, the 23rd day of August, 2005.

[Signature]
 Signature of Plaintiff's Attorney or
 Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

**** Plaintiff To Complete Gray Area ****

To: Paul Wilson P.O. Box 899 Jefferson City, Missouri 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: Missouri ex rel. Nixon v. Rumsfeld et al.

Case Number: 4:05CV01387 JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 31, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

*** * Plaintiff to Complete Gray Area * ***

TO: James H. Bilbray
(Name of defendant)
(as Member of Defense Base Closure and Realignment Commission)
(Title) (Name of business)

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I affirm that this request is being sent to you on behalf of the plaintiff, this 23rd day of August, 2005.
[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

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United States District Court

EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson P.O. Box 899 Jefferson City, Missouri 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

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Case Caption: Missouri ex rel. Nixon v. Rumsfeld et al.

Case Number: 4:05CV01387 JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

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(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

V.
DONALD H. RUMSFELD, et al.

CASE NUMBER:
4 : 05 CV 01387 JCH

and serve: Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve: Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

James H. Bilbray
Member of the Defense Base Closure and
Realignment Commission, 2521 South Clark St.,
Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 60 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

(BY) DEPUTY CLERK

DATE

8/30/05

RETURN OF SERVICE

Service of the Summons and Complaint was made by met	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General of the State of Missouri,)	Civil Action:
)	
Plaintiff,)	4: 05CV01387 JCH
)	
v.)	
)	
DONALD H. RUMSFELD, in his official)	
capacity as Secretary of Defense of the)	
United States; ANTHONY J. PRINCIPI,)	
in his official capacity as Chairman of the)	
Defense Base Closure and Realignment)	
Commission; JAMES H. BILBRAY;)	
PHILIP E. COYLE; HAROLD W.)	
GEHMAN, JR.; JAMES V. HANSEN;)	
JAMES T. HILL; LLOYD W. NEWTON;)	
SAMUEL K. SKINNER; and SUE ELLEN)	
TURNER, in their official capacity as)	
members of the Defense Base Closure and)	
Realignment Commission,)	
)	
Defendants.)	

**COMPLAINT SEEKING A DECLARATORY JUDGMENT
AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").

2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization without having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth in the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

3. The State of Missouri is the Plaintiff in this action.

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the "militia clause" of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.

11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.

17. 1049 military positions are allotted to the 131st Fighter Wing.

18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.

19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.

20. The 131th Fighter Wing is a state military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.

21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on “Air Sovereignty Alert.” This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be “on status” and can “sit alert” to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

24. This protection is essential to Missouri and throughout the Midwest in light of Missouri’s two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.

25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri’s military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.

27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.

28. Recommendations that serve no purpose other than to move aircraft from one unit to another – such as the recommendation for the Lambert Air Guard Station adopted by the Commission – are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.

29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a “realignment.” The BRAC Act does not authorize the Commission to realign a military installation unless there is a “reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed” at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.

30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.

32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.

33 Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."

34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

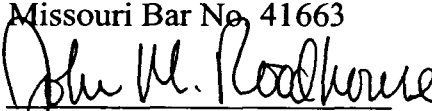
recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.
Louis's Lambert Airport .


Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

PAUL C. WILSON
Assistant Attorney General
Missouri Bar No. 40804

DANIEL Y. HALL
Assistant Attorney General
Missouri Bar No. 41663


JOHN M. ROODHOUSE
Assistant Attorney General
Missouri Bar No. 56413


REX M. BURLISON
Assistant Attorney General
Federal Bar No. 10869

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-8851
Fax No. (573) 751-7094

Attorneys for Plaintiff



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Phillip E. Coyle
(Name of defendant)
(as Member of Defense Base Closure and Realignment Commission)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

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This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

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I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.

[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

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United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

**** Plaintiff To Complete Gray Area ****

To: Paul Wilson P.O. Box 899 Jefferson City, Missouri 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: Missouri ex rel. Nixon v. Rumsfeld et al.

Case Number: 4:05CV01387 JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 31, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Phillip E. Coyle
(Name of defendant)
(as Member of Defense Base Closure and Realignment Commission)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387 JCH

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.
[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



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EASTERN DISTRICT OF MISSOURI

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(Date Waiver sent)

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DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as

(Officer or Agent)

of

(Corporation or Association)

Address

City, State, Zip Code

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

v.

DONALD H. RUMSFELD, et al.

CASE NUMBER:

4 : 05 CV 01387 JCH

and serve: Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve: Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Philip E. Coyle
Member of the Defense Base Closure and
Realignment Commission
2521 S. Clark St.
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLINSON, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 60 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

(BY) DEPUTY CLERK

DATE

8/30/05

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

**STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri,**

Plaintiff,

v.

**DONALD H. RUMSFELD, in his official
capacity as Secretary of Defense of the
United States; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the
Defense Base Closure and Realignment
Commission; JAMES H. BILBRAY;
PHILIP E. COYLE; HAROLD W.
GEHMAN, JR.; JAMES V. HANSEN;
JAMES T. HILL; LLOYD W. NEWTON;
SAMUEL K. SKINNER; and SUE ELLEN
TURNER, in their official capacity as
members of the Defense Base Closure and
Realignment Commission,**

Defendants.

Civil Action:

4: 05CV01387 JCH

**COMPLAINT SEEKING A DECLARATORY JUDGMENT
AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").

2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization without having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth in the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

3. The State of Missouri is the Plaintiff in this action.

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the "militia clause" of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.

11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.

17. 1049 military positions are allotted to the 131st Fighter Wing.

18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.

19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.

20. The 131th Fighter Wing is a state military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.

21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on “Air Sovereignty Alert.” This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be “on status” and can “sit alert” to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

24. This protection is essential to Missouri and throughout the Midwest in light of Missouri’s two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.

25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri’s military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.

27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.

28. Recommendations that serve no purpose other than to move aircraft from one unit to another – such as the recommendation for the Lambert Air Guard Station adopted by the Commission – are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.

29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a “realignment.” The BRAC Act does not authorize the Commission to realign a military installation unless there is a “reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed” at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.

30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.

32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.

33 Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."

34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

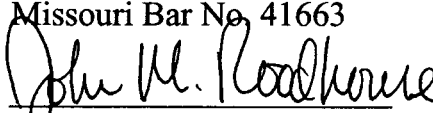
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Louis's Lambert Airport .

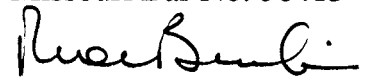
Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

PAUL C. WILSON
Assistant Attorney General
Missouri Bar No. 40804

DANIEL Y. HALL
Assistant Attorney General
Missouri Bar No. 41663


JOHN M. ROODHOUSE
Assistant Attorney General
Missouri Bar No. 56413


REX M. BURLISON
Assistant Attorney General
Federal Bar No. 10869

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-8851
Fax No. (573) 751-7094

Attorneys for Plaintiff



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Harold W. Gehman, Jr.
(Name of defendant)
(as Member of Defense Base Closure and Realignment Commission)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387 JCH.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.

[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

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(Officer or Agent)

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United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Harold W. Gehman, Jr.

(Name of defendant)

(as Member

(Title)

of Defense Base Closure and Realignment Commission

(Name of business)

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I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of AUGUST, 2005.

[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson P.O. Box 899 Jefferson City, Missouri 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: Missouri ex rel. Nixon v. Rumsfeld et al.

Case Number: 4:05CV01387 JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 31, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as

(Officer or Agent)

of

(Corporation or Association)

Address

City, State, Zip Code

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

v.

DONALD H. RUMSFELD, et al.

CASE NUMBER:

4 : 05 CV 01387 JCH

and serve: Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

Harold W. Gehman, Jr.
Member of the Defense Base Closure and
Realignment Commission, 2521 South Clark St.,
Ste. 600
Arlington, VA 22202

and serve: Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 30 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

(BY) DEPUTY CLERK

DATE

8/30/05

RETURN OF SERVICE

Service of the Summons and Complaint was made by met	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

**STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri,**

Plaintiff,

v.

**DONALD H. RUMSFELD, in his official
capacity as Secretary of Defense of the
United States; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the
Defense Base Closure and Realignment
Commission; JAMES H. BILBRAY;
PHILIP E. COYLE; HAROLD W.
GEHMAN, JR.; JAMES V. HANSEN;
JAMES T. HILL; LLOYD W. NEWTON;
SAMUEL K. SKINNER; and SUE ELLEN
TURNER, in their official capacity as
members of the Defense Base Closure and
Realignment Commission,**

Defendants.

Civil Action:

4: 05CV01387 JCH

**COMPLAINT SEEKING A DECLARATORY JUDGMENT
AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").

2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization without having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth in the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

3. The State of Missouri is the Plaintiff in this action.

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

5. Defendant Donald H. Rumsfeld (the “Secretary”) is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the “militia clause” of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.

11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.

17. 1049 military positions are allotted to the 131st Fighter Wing.

18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.

19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.

20. The 131th Fighter Wing is a state military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.

21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on “Air Sovereignty Alert.” This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be “on status” and can “sit alert” to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

24. This protection is essential to Missouri and throughout the Midwest in light of Missouri’s two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.

25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri’s military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.

27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.

28. Recommendations that serve no purpose other than to move aircraft from one unit to another – such as the recommendation for the Lambert Air Guard Station adopted by the Commission – are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.

29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a “realignment.” The BRAC Act does not authorize the Commission to realign a military installation unless there is a “reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed” at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.

30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.

32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.

33 Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."

34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

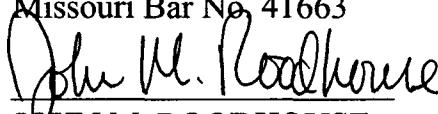
recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.
Louis's Lambert Airport .

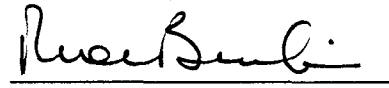
Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

PAUL C. WILSON
Assistant Attorney General
Missouri Bar No. 40804

DANIEL Y. HALL
Assistant Attorney General
Missouri Bar No. 41663


JOHN M. ROODHOUSE
Assistant Attorney General
Missouri Bar No. 56413


REX M. BURLISON
Assistant Attorney General
Federal Bar No. 10869

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-8851
Fax No. (573) 751-7094

Attorneys for Plaintiff



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: James W. Hansen
(Name of defendant)
(as Member of of the Defense Base Closure and Relignment Comm.)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387JCH

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.

[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

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It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court

EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson P.O. Box 899 JEFFERSON CITY, MISSOURI 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 30, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as

(Officer or Agent)

of

(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

*** * Plaintiff to Complete Gray Area * ***

TO: James W. Hansen
(Name of defendant)
(as Member of _____ of the Defense Base Closure and Relignment Comm.)
(Title) (Name of business)

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I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.
[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

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United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

**** Plaintiff To Complete Gray Area ****

To: Paul Wilson P.O. Box 899 Jefferson City, Missouri 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

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Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

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(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

DONALD H. RUMSFELD, et al.

1:05CV01387 JCH

and serve: Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve: Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

James W. Hansen
Member of the Defense Base Closure and
Realignment Commission, 2521 South Clark St.,
Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 60 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

DATE

BY, DEPUTY CLERK

8/30/05

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

**STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri,**

Plaintiff,

v.

**DONALD H. RUMSFELD, in his official
capacity as Secretary of Defense of the
United States; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the
Defense Base Closure and Realignment
Commission; JAMES H. BILBRAY;
PHILIP E. COYLE; HAROLD W.
GEHMAN, JR.; JAMES V. HANSEN;
JAMES T. HILL; LLOYD W. NEWTON;
SAMUEL K. SKINNER; and SUE ELLEN
TURNER, in their official capacity as
members of the Defense Base Closure and
Realignment Commission,**

Defendants.

Civil Action:

4: 05CV01387 JCH

**COMPLAINT SEEKING A DECLARATORY JUDGMENT
AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").

2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization without having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth in the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

3. The State of Missouri is the Plaintiff in this action.

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

5. Defendant Donald H. Rumsfeld (the “Secretary”) is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the “militia clause” of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.

11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.

17. 1049 military positions are allotted to the 131st Fighter Wing.

18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.

19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.

20. The 131th Fighter Wing is a state military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.

21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on “Air Sovereignty Alert.” This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be “on status” and can “sit alert” to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

24. This protection is essential to Missouri and throughout the Midwest in light of Missouri’s two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.

25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri’s military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.

27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.

28. Recommendations that serve no purpose other than to move aircraft from one unit to another – such as the recommendation for the Lambert Air Guard Station adopted by the Commission – are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.

29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a “realignment.” The BRAC Act does not authorize the Commission to realign a military installation unless there is a “reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed” at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.

30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.

32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.

33 Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."

34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

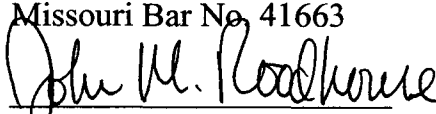
Louis's Lambert Airport .

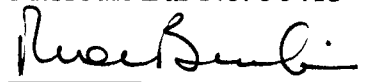
Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

PAUL C. WILSON
Assistant Attorney General
Missouri Bar No. 40804

DANIEL Y. HALL
Assistant Attorney General
Missouri Bar No. 41663


JOHN M. ROODHOUSE
Assistant Attorney General
Missouri Bar No. 56413


REX M. BURLISON
Assistant Attorney General
Federal Bar No. 10869

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-8851
Fax No. (573) 751-7094

Attorneys for Plaintiff



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: James T. Hill
(Name of defendant)
(as Member of of the Defense Base Closure and Relignment Comm.)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387JCH

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.

[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson P.O. Box 899 Jefferson City, Missouri 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 30, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as

(Officer or Agent)

of

(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

*** * Plaintiff to Complete Gray Area * ***

TO: James T. Hill

(Name of defendant)

(as Member of

of the Defense Base Closure and Relignment Comm.)

(Title)

(Name of business)

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Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

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United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

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DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4 : 03 CV 01387 JCH

and serve: Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve: Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

James T. Hill
Member of the Defense Base Closure and
Realignment Commission, 2521 South Clark St.,
Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 30 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

8/30/05

RETURN OF SERVICE

Service of the Summons and Complaint was made by met	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

**STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri,**

Plaintiff,

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in his official capacity as Chairman of the
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PHILIP E. COYLE; HAROLD W.
GEHMAN, JR.; JAMES V. HANSEN;
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Defendants.

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Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").

2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization without having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth in the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

3. The State of Missouri is the Plaintiff in this action.

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the "militia clause" of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.

11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.

17. 1049 military positions are allotted to the 131st Fighter Wing.

18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.

19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.

20. The 131th Fighter Wing is a state military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.

21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

24. This protection is essential to Missouri and throughout the Midwest in light of Missouri's two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.

25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri's military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.

27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.

28. Recommendations that serve no purpose other than to move aircraft from one unit to another – such as the recommendation for the Lambert Air Guard Station adopted by the Commission – are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.

29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a “realignment.” The BRAC Act does not authorize the Commission to realign a military installation unless there is a “reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed” at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.

30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.

32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.

33 Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."

34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

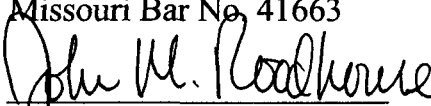
recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.
Louis's Lambert Airport .

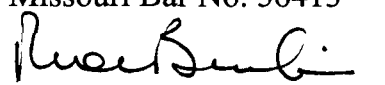
Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

PAUL C. WILSON
Assistant Attorney General
Missouri Bar No. 40804

DANIEL Y. HALL
Assistant Attorney General
Missouri Bar No. 41663


JOHN M. ROODHOUSE
Assistant Attorney General
Missouri Bar No. 56413


REX M. BURLISON
Assistant Attorney General
Federal Bar No. 10869

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-8851
Fax No. (573) 751-7094

Attorneys for Plaintiff



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Lloyd W. Newton
(Name of defendant)
(as Member of _____ of the Defense Base Closure and Relignment Comm.)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387JCH

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of AUGUST, 2005.

[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson P.O. Box 899 JEFFERSON CITY, MISSOURI 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 30, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as

(Officer or Agent)

of

(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Lloyd W. Newton
(Name of defendant)
(as Member of _____ of the Defense Base Closure and Relignment Comm. _____)
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I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of AUGUST, 2005.
[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

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United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

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(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

v.

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4 : 0 5 C V 0 1 3 8 7 JCH

and serve: Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve: Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Lloyd W. Newton
Member of the Defense Base Closure and
Realignment Commission, 2521 South Clark St.,
Ste. 600
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 60 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

(BY) DEPUTY CLERK

DATE

8/30/05

RETURN OF SERVICE

Service of the Summons and Complaint was made by met	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

**STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri,**

Plaintiff,

v.

**DONALD H. RUMSFELD, in his official
capacity as Secretary of Defense of the
United States; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the
Defense Base Closure and Realignment
Commission; JAMES H. BILBRAY;
PHILIP E. COYLE; HAROLD W.
GEHMAN, JR.; JAMES V. HANSEN;
JAMES T. HILL; LLOYD W. NEWTON;
SAMUEL K. SKINNER; and SUE ELLEN
TURNER, in their official capacity as
members of the Defense Base Closure and
Realignment Commission,**

Defendants.

Civil Action:

4: 05CV01387 JCH

**COMPLAINT SEEKING A DECLARATORY JUDGMENT
AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
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Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

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Nature of This Action

1. This action arises out of the attempt by United States Department of Defense (“Department”) to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard (“131st Fighter Wing”) to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note (“BRAC Act”).

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5. Defendant Donald H. Rumsfeld (the “Secretary”) is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the “militia clause” of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.

11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.

17. 1049 military positions are allotted to the 131st Fighter Wing.

18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.

19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.

20. The 131th Fighter Wing is a state military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.

21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on “Air Sovereignty Alert.” This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be “on status” and can “sit alert” to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

24. This protection is essential to Missouri and throughout the Midwest in light of Missouri’s two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.

25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri’s military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.

27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.

28. Recommendations that serve no purpose other than to move aircraft from one unit to another – such as the recommendation for the Lambert Air Guard Station adopted by the Commission – are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.

29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a “realignment.” The BRAC Act does not authorize the Commission to realign a military installation unless there is a “reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed” at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.

30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.

32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.

33 Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."

34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

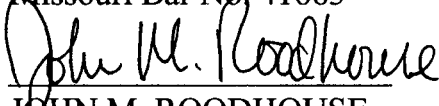
recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.
Louis's Lambert Airport .

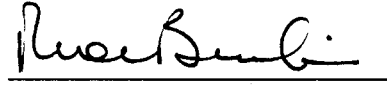
Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

PAUL C. WILSON
Assistant Attorney General
Missouri Bar No. 40804

DANIEL Y. HALL
Assistant Attorney General
Missouri Bar No. 41663


JOHN M. ROODHOUSE
Assistant Attorney General
Missouri Bar No. 56413


REX M. BURLISON
Assistant Attorney General
Federal Bar No. 10869

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-8851
Fax No. (573) 751-7094

Attorneys for Plaintiff



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Anthony J. Principi
(Name of defendant)
(as Ch. _____ of the Defense Base Closure and Relignment Comm. _____)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387JCH

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the Plaintiff, this 31st day of August, 2005.

M. J. Sullivan
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court

EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 30, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

*** * Plaintiff to Complete Gray Area * ***

TO: Anthony J. Principi
(Name of defendant)
(as Ch. of the Defense Base Closure and Relignment Comm.)
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If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.
M. J. [Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

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It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

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United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

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**** Plaintiff To Complete Gray Area ****

To: Paul Wilson
(Name of plaintiff's attorney or unrepresented plaintiff)

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Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

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I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

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(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date _____

Print name _____

Signature _____

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address _____

City, State, Zip Code _____

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4 : 05 CV 01387 JCH

and serve: Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve: Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Anthony J. Principi
Ch. Def. Base Closure
& Realignment Comm.
2521 S. Clark St.
Arlington, VA 22202

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

(BY) DEPUTY CLERK

DATE

8/30/05

RETURN OF SERVICE

Service of the Summons and Complaint was made by met	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

**STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri,**

Plaintiff,

v.

**DONALD H. RUMSFELD, in his official
capacity as Secretary of Defense of the
United States; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the
Defense Base Closure and Realignment
Commission; JAMES H. BILBRAY;
PHILIP E. COYLE; HAROLD W.
GEHMAN, JR.; JAMES V. HANSEN;
JAMES T. HILL; LLOYD W. NEWTON;
SAMUEL K. SKINNER; and SUE ELLEN
TURNER, in their official capacity as
members of the Defense Base Closure and
Realignment Commission,**

Defendants.

Civil Action:

4: 05CV01387 JCH

**COMPLAINT SEEKING A DECLARATORY JUDGMENT
AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").

2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization without having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth in the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

3. The State of Missouri is the Plaintiff in this action.

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the "militia clause" of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

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11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

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21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on “Air Sovereignty Alert.” This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be “on status” and can “sit alert” to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

24. This protection is essential to Missouri and throughout the Midwest in light of Missouri’s two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.

25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri’s military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.

27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.

28. Recommendations that serve no purpose other than to move aircraft from one unit to another – such as the recommendation for the Lambert Air Guard Station adopted by the Commission – are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.

29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a “realignment.” The BRAC Act does not authorize the Commission to realign a military installation unless there is a “reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed” at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.

30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.

32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.

33 Pursuant to 32 U.S.C. Section 104(c), “. . . no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.” Under 32 U.S.C. Section 104(f)(1), “unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded.”

34. Pursuant to 10 U.S.C. Section 18328, “a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State”

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

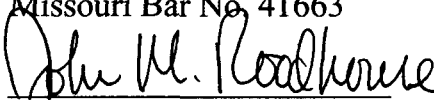
Louis's Lambert Airport .


Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

PAUL C. WILSON
Assistant Attorney General
Missouri Bar No. 40804

DANIEL Y. HALL
Assistant Attorney General
Missouri Bar No. 41663


JOHN M. ROODHOUSE
Assistant Attorney General
Missouri Bar No. 56413


REX M. BURLISON
Assistant Attorney General
Federal Bar No. 10869

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-8851
Fax No. (573) 751-7094

Attorneys for Plaintiff



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Samuel K. Skinner
(Name of defendant)
(as Member of the Defense Base Closure and Realignment Commission)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387JCH

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.

Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson P.O. Box 899 JEFFERSON CITY, MISSOURI 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 30, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as

(Officer or Agent)

of

(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Samuel K. Skinner
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If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.
[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

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It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

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United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

**** Plaintiff To Complete Gray Area ****

To: Paul Wilson P.O. Box 899 JEFFERSON CITY, MISSOURI 65102
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

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in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

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(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as

(Officer or Agent)

of

(Corporation or Association)

Address

City, State, Zip Code

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4:05CV01387 JCH

and serve:

Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Samuel K. Skinner
Member of the Defense Base Closure and
Realignment Commission, 2521 South Clark St.,
Ste. 600
Arlington, VA 22202

Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 60 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

(BY) DEPUTY CLERK

DATE

8/30/05

RETURN OF SERVICE

Service of the Summons and Complaint was made by met	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

**STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri,**

Plaintiff,

v.

**DONALD H. RUMSFELD, in his official
capacity as Secretary of Defense of the
United States; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the
Defense Base Closure and Realignment
Commission; JAMES H. BILBRAY;
PHILIP E. COYLE; HAROLD W.
GEHMAN, JR.; JAMES V. HANSEN;
JAMES T. HILL; LLOYD W. NEWTON;
SAMUEL K. SKINNER; and SUE ELLEN
TURNER, in their official capacity as
members of the Defense Base Closure and
Realignment Commission,**

Defendants.

Civil Action:

4: 05CV01387 JCH

**COMPLAINT SEEKING A DECLARATORY JUDGMENT
AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").

2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization without having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth in the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

3. The State of Missouri is the Plaintiff in this action.

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the "militia clause" of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.

11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.

17. 1049 military positions are allotted to the 131st Fighter Wing.

18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.

19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.

20. The 131th Fighter Wing is a state military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.

21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

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Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on "Air Sovereignty Alert." This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be "on status" and can "sit alert" to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

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directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

31. Plaintiff re-alleges paragraphs 1 through 30, above, and incorporate them by reference as though fully set forth herein.

32. The 131th Fighter Wing is organized as a unit of the Missouri Air National Guard (state) and Air Combat Command (federal). Its members receive compensation from the United States.

33 Pursuant to 32 U.S.C. Section 104(c), "... no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor." Under 32 U.S.C. Section 104(f)(1), "unless the President consents . . . an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded."

34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

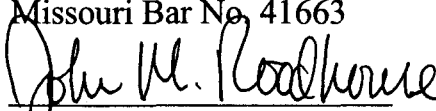
Louis's Lambert Airport .


Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

PAUL C. WILSON
Assistant Attorney General
Missouri Bar No. 40804

DANIEL Y. HALL
Assistant Attorney General
Missouri Bar No. 41663


JOHN M. ROODHOUSE
Assistant Attorney General
Missouri Bar No. 56413


REX M. BURLISON
Assistant Attorney General
Federal Bar No. 10869

P.O. Box 899
Jefferson City, Missouri 65102
Phone No. (573) 751-8851
Fax No. (573) 751-7094

Attorneys for Plaintiff



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Sue Ellen Turner
(Name of defendant)
(as Member of the Defense Base Closure and Realignment Commission)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 4:05CV01387JCH

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005.
[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court

EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 30, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as

(Officer or Agent)

of

(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

*** * Plaintiff to Complete Gray Area * ***

TO: Sue Ellen Turner
(Name of defendant)
(as Member of the Defense Base Closure and Realignment Commission)
(Title) (Name of business)

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of Missouri and has been assigned docket number 4:05CV01387JCH

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If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 31st day of August, 2005
[Signature]
Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court

EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: Paul Wilson
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: St. of MO. ex. rel. v. Donald Rumsfeld, et al

Case Number: 4:05CV01387JCH

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 30, 2005

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code

United States District Court

EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri

SUMMONS IN A CIVIL CASE

v.

CASE NUMBER:

DONALD H. RUMSFELD, et al.

4 : 05 CV 01387 JCH

and serve:

Catherine T. Hanaway
U.S. Attorney
111 South 10th St., 20th Floor
St. Louis, Mo 63102

TO: (Name and address of defendant)

and serve:

Sue Ellen Turner
Member of the Defense Base Closure and
Realignment Commission, 2521 South Clark St.,
Ste. 600
Arlington, VA 22202

Alberto Gonzales
Attorney General of the U.S.
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

P. O. Box 899
Jefferson City, MO 65102

PAUL C. WILSON, Missouri Bar No. 40804
Assistant Attorney General

DANIEL Y. HALL, Missouri Bar No. 41663
Assistant Attorney General

REX M. BURLSION, Federal Bar No. 10869
Assistant Attorney General

an answer to the complaint which is herewith served upon you, within 60 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a
reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

8/30/05

RETURN OF SERVICE

Service of the Summons and Complaint was made by met	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

**STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General of the State of Missouri,**

Plaintiff,

v.

**DONALD H. RUMSFELD, in his official
capacity as Secretary of Defense of the
United States; ANTHONY J. PRINCIPI,
in his official capacity as Chairman of the
Defense Base Closure and Realignment
Commission; JAMES H. BILBRAY;
PHILIP E. COYLE; HAROLD W.
GEHMAN, JR.; JAMES V. HANSEN;
JAMES T. HILL; LLOYD W. NEWTON;
SAMUEL K. SKINNER; and SUE ELLEN
TURNER, in their official capacity as
members of the Defense Base Closure and
Realignment Commission,**

Defendants.

Civil Action:

4: 05CV01387 JCH

**COMPLAINT SEEKING A DECLARATORY JUDGMENT
AS WELL AS A PRELIMINARY AND PERMANENT INJUNCTIONS**

Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon,
Attorney General of the State of Missouri, files this Complaint against Donald H.
Rumsfeld, in his official capacity as the Secretary of Defense of the United States;
Anthony J. Principi, in his official capacity as Chairman of the Defense Base Closure and
Realignment Commission (the "Commission"); James H. Bilbray; Philip E. Coyle;
Harold W. Gehman, Jr.; James V. Hansen; James T. Hill; Lloyd W. Newton; Samuel K.

Skinner; and Sue Ellen Turner, in their official capacity as members of the Commission, and states as follows:

Nature of This Action

1. This action arises out of the attempt by United States Department of Defense ("Department") to fundamentally change the organization and allotment of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, Missouri. This attempted change in organization involves primarily the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard ("131st Fighter Wing") to other units outside Missouri, and the elimination of hundreds of military positions related thereto. The Defendants attempted to effect this reorganization by using the procedures set forth in the Defense Base Closure and Realignment Act of 1990, as amended, codified at 10 U.S.C. § 2687 note ("BRAC Act").

2. Defendants' attempt to reorganize the 131st Fighter Wing exceeds that which is authorized by the BRAC Act. In addition, Defendants attempted to accomplish this reorganization without having sought or obtained the consent or approval of the Governor of the State of Missouri, the commander-in-chief of the Missouri National Guard, as required by federal statutes. Finally, the Department, in reaching its recommendation to reorganize the 131st Fighter Wing, substantially deviated from the criteria set forth in the BRAC Act, a violation that the Commission failed in its duty to identify and remedy even after presented with overwhelming evidence by state officials

and officers from the 131st Fighter Wing. This issue is still before the Commission, but may be raised in this Court once the Commission votes are final.

Parties, Jurisdiction and Venue

3. The State of Missouri is the Plaintiff in this action.

4. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

5. Defendant Donald H. Rumsfeld (the "Secretary") is the Secretary of Defense of the United States of America.

6 Defendant Anthony J. Principi was appointed by the President of the United States to be Chairman of the Defense Base Closure and Realignment Commission, and is being sued in this proceeding in that official capacity.

7. Defendants James H. Bilbray, Philip E. Coyle, Harold W. Gehman, Jr., James V. Hansen, James T. Hill, Lloyd W. Newton, Samuel K. Skinner, and Sue Ellen Turner were appointed by the President of the United States to be members Commission, are being sued in that official capacity.

8. This action arises under the "militia clause" of the United States Constitution, art. I, sec. 8, cl. 16; the Base Closure Act; 10 U.S.C. § 18238; and 32 U.S.C. § 104. This Court has jurisdiction over this action based on 28 U.S.C. § 1331 because it arises under the laws of the United States.

9. Venue is proper in this judicial district under 28 U.S.C. §1391(a)(2), because a substantial part of the acts on which this action is based occurred within this

district and a substantial part of the property that is the subject of the action is situated within this judicial district.

Factual Background

10. On May 13, 2005, Secretary Rumsfeld presented the Department of Defense Base Closure and Realignment Report ("BRAC Report") to the Commission.

11. The BRAC Report was prepared by the Department pursuant to the BRAC Act.

12. The BRAC Report contains nearly 200 recommendations from the Secretary to close or realign military installations within the United States and its territories.

13. The BRAC Report recommends fundamental changes to the organization of the Lambert-St. Louis International Airport Air Guard Station in St. Louis, including the transfer of all fifteen F-15 aircraft of the 131st Fighter Wing of the Missouri Air National Guard to the 57th Fighter Wing at Nellis Air Force Base in Nevada and the 177th Fighter Wing at Atlantic City International Airport Guard Station in New Jersey.

14. This recommendation will certainly cause the loss of hundreds of Guardsmen, and an unknown number of civilian jobs at and around the Lambert-St. Louis International Airport Air Guard Station.

15. The Commission adopted this recommendation by unanimous vote on August 26, 2005.

16. The 131th Fighter Wing is an operational flying Air National Guard unit located entirely within the State of Missouri.

17. 1049 military positions are allotted to the 131st Fighter Wing.

18. The 131th Fighter Wing's strength currently stands at about 99% of the authorized positions.

19. 131th Fighter Wing personnel consist of 358 full-time support personnel (270 military technicians and 88 Active Guard and Reserve), 645 traditional (part-time) Guard members, and 37 state employees.

20. The 131th Fighter Wing is a state military force. This well-trained and mission-ready Fighter Wing is under the command and control of the Governor of Missouri, pursuant to Article 4, Section 6 of the Missouri Constitution, and is ready to perform active duty missions for the states dealing with homeland security, natural disasters and other state missions.

21. This Fighter Wing is one of the best and most experienced fighter wings in this country. Since September 11, 2001, the 131st Fighter Wing has filled 1593 mobilized/activated positions in direct support of combat operations and homeland defense. Many members have volunteered for activation or been involuntarily mobilized more than once.

22. The 131th Fighter Wing has been intensely involved in combat operations. Since 1996, its deployments have included the following: Operation PROVIDE COMFORT, Incirlik AB, Turkey, 1996; Operation NORTHERN WATCH, Incirlik AB,

Turkey, 1997 and 1998; Operation SOUTHERN WATCH, Prince Sultan, AB, Saudi Arabia, 2000; Air Expeditionary Force rotation to Keflavik AB, Iceland, 2002; and Operation NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM, Central and Southwest Asia, Turkey, Saudi Arabia, Oman, Germany, Qatar, United Arab Emirates, Afghanistan, Kuwait.

23. The 131st Fighter Wing is equipped and capable to go on “Air Sovereignty Alert.” This means that, if tasked to do so, its pilots, the F-15s, and all necessary maintenance and support personnel will be “on status” and can “sit alert” to provide protection against civil disturbance, acts of terrorism, or invasion in Missouri, and throughout much of central United States.

24. This protection is essential to Missouri and throughout the Midwest in light of Missouri’s two major metropolitan areas, two military facilities, one major defense contractor, the locks and dams network on the Mississippi River, one nuclear facility, one defense arsenal, extensive road system, two major rail heads, and overland nuclear shipment routes. This is a target-rich environment and aircraft, on alert and just minutes away, could make the difference between success and failure in a future attack.

25. If the Secretary and the Commission are successful in pulling the fifteen F-15s out of the 131th Fighter Wing Missouri’s military strength will be substantially reduced. Such a reorganization increases the risks to Missourians, and deprives the Governor of Missouri of an irreplaceable tool in maintaining homeland security.

COUNT I

26. Plaintiff re-alleges paragraphs 1 through 25, above, and incorporate them by reference as though fully set forth herein.

27. The BRAC Act, which by its very name only applies to bases and not units or equipment, authorizes the Secretary to recommend and the Commission to adopt only two types of actions: (1) closing a base entirely and disposing of all of the property; or (2) closing part of a base, disposing of part of the property, and leaving behind a functioning military unit.

28. Recommendations that serve no purpose other than to move aircraft from one unit to another – such as the recommendation for the Lambert Air Guard Station adopted by the Commission – are not authored by the BRAC Act. The Commission, in adopting this recommendation on August 26, 2005, has exceeded its authority under the BRAC Act.

29. The Secretary and the Commission characterize this dismantling of the 131st Fighter Wing as a “realignment.” The BRAC Act does not authorize the Commission to realign a military installation unless there is a “reduction by more than 1000, or by more than 50 percent, in the number of civilian personnel authorized to be employed” at that installation. 10 U.S.C. Section 2687(a)(2). The recommendation for Lambert Air Guard Station, as adopted by the Commission on August 26, 2005, does not meet this test.

30. Rather than focus on reducing the armed forces infrastructure, as it was supposed to do, the Commission descended into the micro management of the military,

directing the disposition of individual aircraft. The BRAC Act does not authorize the Commission to transfer an entire complement of aircraft from Missouri to units outside Missouri. Congress alone is granted the authority by the Constitution to equip the Armed Forces of the United States, and Congress did not delegate this power to the Commission through the language of the BRAC Act. BRAC's micro management, therefore, is in violation of the BRAC Act.

COUNT II

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34. Pursuant to 10 U.S.C. Section 18328, "a unit of . . . the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State"

35. The transfer of all the 131th Fighter Wing's F-15 aircraft constitutes, as a practical and legal matter, a "change in the branch, organization or allotment of a unit located entirely within a State", a "relocat[ion] or withdraw[al]" of a "unit of the . . . Air National Guard of the United States," and a "disband[ing]" of "an organization of the National Guard", as those terms are used above.

36. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri to change the branch, organization or allotment of the 131th Fighter Wing.

37. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the Governor of Missouri or his authorized representatives to relocate or withdraw the 131th Fighter Wing.

38. If requested, the Governor of Missouri would not give his approval to relocate, withdraw, or change the branch, organization or allotment of the 131th Fighter Wing.

39. At no time during the 2005 BRAC process did the Secretary or anyone representing the Commission seek or obtain the consent of the President to disband the 131st Fight Wing. Even should the President forward to Congress a report from the Commission that contained a recommendation that would effectively disband the 131st Fighter Wing, the President's consent cannot be inferred because the President, faced with an all-or-nothing proposition, would not have had an unencumbered choice.

40. In May 2005 and at all times subsequent to the Secretary's transmittal of the BRAC Report to the Commission, an overwhelming majority of the 131th Fighter Wing was not and currently is not in active federal service.

COUNT III

41. Plaintiff re-alleges paragraphs 1 through 40, above, and incorporate them by reference as though fully set forth herein.

42. Under the provisions of the United States Constitution, authority over the military is divided between the federal and state governments. U.S.C.A. Const. Art. 1, §8. The guarantee of the Second Amendment, regarding states' right to a well-regulated militia, was made for the purpose to assure the continuation and effectiveness of state militia. U.S.C.A. Const. Amend II.

43. The Secretary's recommendations to realign the 131st Fighter Wing violates Art. 1, §8 and Amendment II of the United States Constitution by interfering with the maintenance and training of the Missouri National Guard, without the approval of the Governor of the State of Missouri.

COUNT IV

44. Plaintiff re-alleges paragraphs 1 through 43, above, and incorporate them by reference as though fully set forth herein.

45. Pursuant to 10 U.S.C §18235(b)(1), the Secretary of Defense may not permit any use or disposition of a facility for a reserve component of the armed forces

that would interfere with the facilities' use for administering and training the reserve components of the armed forces.

46. The Secretary's proposed realignment of the 131st Fighter Wing would result in interference with the use of the Lambert-St. Louis International Airport Air Guard Station for the training and administering of reserve components of the armed forces and is barred by 10 U.S.C. §18235(b)(1).

RIPENESS FOR JUDICIAL REVIEW

47. Pursuant to the military base closure and realignment process set forth in the BRAC Act, Secretary Rumsfeld has finally and completely fulfilled his reporting requirements with respect to the 2005 round of alignments and closures to military installations, and no further actions are required of the Department before the recommendations relating to the 131st Fighter Wing take effect.

48. On August 26, 2005, the Commission adopted the Secretary's recommendation relating to the 131st Fighter Wing, and only the ministerial act of delivering its report to the President remains. Now, during the period between adopting the recommendation and the deadline for presenting those recommendations to the President, is a proper time to challenge the validity of the Secretary's actions, and those of the Commission, and to preliminarily and permanently enjoin the Commission from including the recommendation relating to the 131st Fighter Wing to the President in its report.

RELIEF SOUGHT

Plaintiff prays that judgment be entered in his favor and against Defendants on Counts I, II, III, and IV, and – if the State prevails on even one of these Counts – that the Court grant the following relief:

A. An Order declaring that any recommendations relating to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport included by the Secretary in his BRAC Report are invalid, null and void, and not properly before the Commission; and

B. An Order declaring that any recommendation purporting to relate to the 131st Fighter Wing and/or the Air Guard Station in St. Louis's Lambert Airport that were adopted by the Commission are invalid, null and void, and cannot properly be included in the Bill presented to the President; and

C. A Preliminary and Permanent Injunction against the Commission and its members from including in its Bill, or otherwise delivering to the President, the

recommendation relating to the 131st Fighter Wing and/or the Air Guard Station in St.

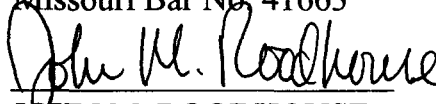
Louis's Lambert Airport .

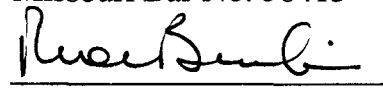
Respectfully submitted,

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